

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>DAVID MICAH BLACK MOON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>SGT ROWHER, Sgt at Jameson Annex, in his or her official capacity; YOST, SCO at Hill Transport, in his or her individual capacity,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:23-CV-04187-KES</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INITIAL PARTIAL FILING FEE</p>
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Plaintiff, David Micah Black Moon, an inmate at the South Dakota State Penitentiary, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. Black Moon moves to proceed in forma pauperis and has included his prisoner trust account report. Dockets 2, 3.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Thus, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Black Moon reports an average monthly deposit of \$52.00 and an average monthly balance of \$28.06. Docket 3 at 1. Based on the information regarding Black Moon's prisoner trust account, the court grants Black Moon leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$10.40 (20 percent of his average monthly deposit). Black Moon must pay the initial partial filing fee of **\$10.40 by December 8, 2023**. Failure to pay the filing fee by December 8, 2023, will result in dismissal without prejudice of Black Moon's complaint.

Thus, it is ORDERED:

1. That Black Moon's motion for leave to proceed in forma pauperis (Docket 2) is granted. Black Moon must make a payment of **\$10.40 by December 8, 2023**, made payable to the Clerk, U.S. District Court. If Black Moon does not pay the initial partial filing fee by December 8, 2023, his complaint will be dismissed without prejudice. The court will conduct a 28 U.S.C. § 1915A screening after he pays his initial partial filing fee.
2. That the institution having custody of Black Moon is directed that whenever the amount in Black Moon's trust account, exclusive of funds

available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Black Moon's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1) until the \$350 filing fee is paid in full.

Dated November 9, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE